

REMARKS

Claims 16-22, 26-28 and 43-44 are pending in the present application. Claims 16, 27, and 28 have been amended. Claims 42, 45, and 46 have been cancelled without prejudice. Support for the claim amendments can be found in the specification, *inter alia*, at page 2, lines 11-24, Fig. 3, and the original claims. Accordingly, applicants respectfully submit that no new matter has been added.

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and in view of the reasons which follow.

Applicants thank the Examiner for indicating that claims 43-46 contain allowable subject matter. In addition, applicants thank the Examiner for conducting an interview with applicants' representative on May 6, 2003, in which the amendments contained herein were discussed.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, are presented, with an appropriate defined status identifier.

Claim Rejections Under 35 U.S.C. § 112, first paragraph

In the Office Action, claims 42 and 45-46 were rejected under 35 U.S.C. § 112, first paragraph as containing subject matter which was not described in the specification. Without acquiescing to the propriety of the rejection, applicants have cancelled claims 42, 45, and 46 without prejudice, rendering this rejection moot. Accordingly, applicants respectfully request reconsideration of this rejection.

Claim Rejections Under 35 U.S.C. § 112, second paragraph

Claims 27-28 were rejected under 35 U.S.C. 112, second paragraph as being indefinite. Applicants have amended these claims to remove the term "is provided for the photographing of z-sections in a desired directional orientation." Accordingly, applicants respectfully request reconsideration of this rejection.

Claim Rejections Under 35 U.S.C. § 102(b)

In the Office Action, claims 16-18, 26 and 42 were rejected under 35 U.S.C. §102(b) as being anticipated by Ito et al. (USP 4,650,335). Applicants respectfully traverse this rejection for the following reasons. Ito does not disclose “optics defining a path of rays of a confocal microscope.” Instead, Ito discloses a scanning microscope, not a confocal scanning microscope. As this feature is now recited in the body of the pending claims, applicants respectfully submit that claims 16-18, and 26 are not anticipated by Ito. As claim 42 was cancelled without prejudice, that rejection is now moot.

Claim Rejections Under 35 U.S.C. § 103(a)

In the Office Action, claim 19 was rejected under 35 U.S.C. §103 as being unpatentable over Ito et al. in view of Wasmund et al. (USP 4,181,436). Claims 20-22 were rejected under 35 U.S.C. 103(a) as being unpatentable over Ito et al. in view of Japanese reference no. 8-334698. Claims 27 and 28 were rejected under 35 U.S.C. 103(a) as being unpatentable over Ito et al. in view of Hasegawa (USP 5,270,855). Applicants respectfully traverse these rejections for the following reasons.

Applicants incorporate their remarks concerning these references from the Amendment dated December 6, 2002. In addition, the cited references, either taken alone, or in combination, do not teach or suggest the claimed confocal microscope comprising “optics defining a path of rays of a confocal microscope.” As discussed above, Ito does not disclose this feature. Moreover, Wasmund, Hasegawa, and Japanese reference no. 8-334698 do not teach or suggest this claimed feature. Accordingly, a *prima facie* case of obviousness has not been established as each claimed element is neither taught nor suggested by the cited references. Further, sufficient evidence has not been provided regarding the motivation to modify Ito in order to produce a confocal microscope having the recited features. Accordingly, applicants respectfully request reconsideration of the outstanding rejections and passage of the claims to allowance.

Conclusion

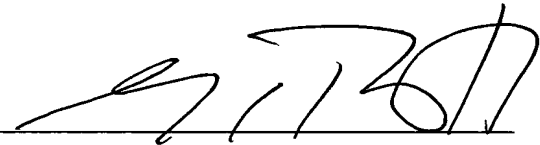
The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorize payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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